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REPORTS

OF MALAYSIAN, SINGAPORE AND BRUNEI CASES DETERMINED IN THE HIGH COURTS, THE SUPREME COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.

SINGAPORE REPORTS

The Official Receiver, Liquidator of Jason Textile Industries Pte Ltd v QBE Insurance (International) Ltd

COURT OF APPEAL (SINGAPORE) – CIVIL APPEAL NO 92 OF 1986
WEE CHONG JIN CJ, RAJAH AND CHAN SEK KEONG JJ
23 NOVEMBER 1988

Civil Procedure – Renewal of writ of summons – Whether court has power to extend validity of writ for five successive 12-month periods at any one time – Whether non-renewal of writ that is served after its expiry is a curable irregularity – Limits of court's discretion in curing irregularity – Application for renewal of writ to show good reasons – Consequence that claim would be time-barred if renewal of writ is refused is not a good reason – Rules of the Supreme Court 1970, O 2 r 1 & O 6 r 7

The plaintiffs issued a writ of summons against the defendants on 2 December 1980 for alleged loss and damage arising from a fire which occurred on 4 December 1979. The validity of the writ for service expired on 1 December 1981, but neither the writ nor the statement of claim was served on the defendants. On 7 August 1985, 56 months after the writ was issued, the plaintiffs filed an ex parte application to renew the validity of the writ for service for five successive 12-month periods from 1 December 1981 to 2 December 1986. On 18 November 1985, the plaintiffs were granted an order in terms of their application. The writ was served on 12 December 1985 and the defendants applied to set aside the writ. The deputy registrar granted the defendants' application and the plaintiffs appealed to the High Court which dismissed the appeal. The plaintiffs then appealed to the Court of Appeal. The appeal raised the following issues: (a) whether the court has power under O 6 r 7 of the Rules of the Supreme Court 1970 to extend the validity of the writ for five successive 12-month periods; (b) whether the non-renewal of a writ that is served after the expiry of its period of validity can be treated as an 'irregularity' under O 2 r 1; (c) what are the limits to the exercise of the court's discretion under O 2 r 1 in deciding whether or not to cure any irregularity; (d) if the court has the power to extend the validity of the writ, what are the principles which govern the exercise of this discretion.

Held, dismissing the appeal:

(1) The court's power under O 6 r 7 is limited to extending the validity of the writ for a maximum of 12 months at any one time. This means that an application for renewal must be made at the latest within 12 months of the expiry of the writ. There is no power to grant two or more successive renewals to bring the writ up to date.

(2) The non-renewal of a writ served after expiry is an 'irregularity' within O 2 r 1 so that it could be, as it were, cured. This conclusion is compelled by the width of the wording of the rule. However, the court's power to cure an irregularity under O 2 r 1 can only be exercised if the court could have properly granted the order, for which there was a failure to apply, had there also been an application made pursuant to the relevant provision in the Rules.

(3) In the present case, the plaintiffs could not avail themselves of O 2 r 1. The writ was set aside by the learned registrar on 22 May 1986, and had an application under O 6 r 7 been made to the registrar, he would not have been able to renew the writ in the manner asked for for two reasons: (a) on 22 May 1986, more than 12 months would have lapsed since the validity of the writ last expired (ie 1 December 1981) and there is no power to renew the writ for more than 12 months; (b) the plaintiffs have not shown any good reason why the validity of the writ ought to have been extended and it would not be a proper exercise of discretion to grant it.

(4) The case has to be looked at as a whole and all circumstances must be considered in deciding whether there are good reasons for extending the validity of the writ. On the facts, there is no question of the plaintiffs' inability to serve the writ. The plaintiffs were simply unwilling to effect service on the defendants. The fact that if renewal is refused, the plaintiffs' claim would be time-barred is not an exceptional circumstance. What is required in an application for renewal are not exceptional circumstances but good reasons.

Cases referred to

1 *Player* v *Bruguiere*; *Chappell* v *Cooper* [1980] 2 All ER 463 (folld)
2 *Bernstein* v *Jackson* [1982] 2 All ER 806 (folld)
3 *Leal* v *Dunlop Bio-Processes Ltd* [1984] 2 All ER 207 (folld)
4 *Devon & Cornwall Housing Association Ltd* v *Acland Thorman & Miller-Williams* (1986) 6 Con LR 41 (refd)
5 *Heaven* v *Road & Rail Wagons* [1965] 2 QB 355 (folld)
6 *Kleinwort Benson Ltd* v *Barbrak Ltd* [1987] AC 597 (folld)
7 *Waddon* v *Whitecroft Scovill Ltd* [1988] 1 WLR 309 (folld)

Legislation referred to

Rules of the Supreme Court 1970 O 2 r 1, O 6 r 7

Appeal from: Suit No 3787 of 1980 (High Court, Singapore)

Liu Yuen Ming for the plaintiffs/appellants.
Harry Elias (*Miss Pauline Tan* with him) for the defendants/respondents.

Cur Adv Vult

Wee Chong Jin CJ (delivering the judgment of the court): On 2 December 1980 the plaintiffs, a company in liquidation, issued the writ of summons in this action,

claiming under certain policies of insurance issued by the defendants, for alleged loss and damage arising from a fire which occurred on 4 December 1979. The writ of summons contained an endorsement of the plaintiffs' claims.

On 20 January 1981, more than a year after the fire had occurred, the plaintiffs filed their statement of claim. The validity of the writ for service expired on 1 December 1981. Neither the writ nor the statement of claim was served on the defendants.

On 7 August 1985, some four and a half years after the writ was issued, the plaintiffs filed an ex parte application to court to renew the validity of the writ for service for five successive 12-month periods from:

(a) 1 December 1981 to 2 December 1982;
(b) 1 December 1982 to 2 December 1983;
(c) 1 December 1983 to 2 December 1984;
(d) 1 December 1984 to 2 December 1985; and
(e) 1 December 1985 to 2 December 1986.

On 18 November 1985, the plaintiffs were granted an order in terms of their ex parte applications. At this juncture, we would just note that, the writ having expired on 1 December 1981 each successive 12-month extension ought to begin on 2 December and end on 1 December the following year, instead of beginning on the first and ending on the second.

The writ was served on 12 December 1985 and on 9 January 1986 the defendants applied to set aside the writ and all subsequent proceedings. On 22 May 1986, the learned deputy registrar made an order in terms of the defendants' application.

The plaintiffs appealed to the High Court which dismissed the appeal on 14 October 1986.

The plaintiffs' appeal to this court was dismissed with costs. We now give our reasons.

The appeal before us raised the following issues:

(1) Whether the court has power under O 6 r 7 to extend the validity of the writ in the manner applied for, ie for five successive 12-month periods. Implicit in this is the question whether the court has power to grant leave to renew the writ where the application for renewal was made more than 12 months after the validity of the writ has expired;
(2) whether the non-renewal of a writ that is served after the expiry of its period of validity can be treated as an 'irregularity' under O 2 r 1;
(3) what are the limits to the exercise of the court's discretion under O 2 r 1 in deciding whether or not to cure any irregularity; and
(4) if the court has the power to extend the validity of the writ in this case, what are the principles which govern the exercise of this discretion.

Order 6 rule 7

The application for renewal of the writ in this case had been made 56 months after the validity of the writ for service had expired. The application asked for retrospective renewal for four successive 12-month periods and renewal for one current 12-month period.

Order 6 r 7 of the Rules of the Supreme Court provides as follows:

> (1) For the purpose of service, a writ ... is valid in the first instance for 12 months, beginning with the date of its issue ...
>
> (2) Where a writ has not been served on a defendant, the court may by order extend the validity of the writ from time to time for such period not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the court before that day or such later day (if any) as the court may allow.

We accepted the respondents' contention that the court's power under O 6 r 7 is limited to extending the validity of the writ for a maximum of 12 months at any one time. This means that an application for renewal must be made at the latest within 12 months of the expiry of the writ. There is no power to grant two or more successive renewals to bring the writ up to date.

In our judgment, this is the logical construction of the rule as the court can extend the validity of the writ only for a maximum of 12 months at any one time. This construction is also supported by authority.

In *Player* v *Bruguiere*,[1] which was heard together with *Chappell* v *Cooper*,[1] the writ was issued on 6 December 1974. The plaintiffs did not apply for leave to extend the validity of the writ until 13 June 1979. The Court of Appeal refused to grant the extension sought. Delivering the leading judgment, Roskill LJ, at p 469, referred to RSC O 6, r 8(2) which is equivalent to our O 6 r 7(2), and went on to say:

> Let me give the dates. The writ in the action ... was issued on 6 December 1974. The 12 months therefore expired on 5 December 1975, and *the second period of 12 months, which would be the maximum for which a timeous extension might be allowed*, would have run out on 5 December 1976. But the affidavit in support of this application was not sworn until 13 June 1979, some 3½ years after that last date. In view of those dates, it seems to me clear, with all respect to counsel for the plaintiff, beyond doubt that we have no power under the rules to grant the extension sought. (emphasis added)

In *Bernstein* v *Jackson*[2] the writ was issued on 7 December 1977. An order for substituted service of notice of the writ was made *after* the expiry of the validity of the writ. The defendants' application to set aside the order for substituted service was allowed, inter alia, on the ground that at the date of the order for substituted service, ie 28 January 1981, the writ had not been renewed and the

judge could not in any event have then renewed it so as to extend its validity beyond 5 December 1979 (ie 24 months after the date of issue of the writ).

Order 2 rule 1

The plaintiffs further contended that even if the order for renewal of the writ was wrong so that service of the writ was irregular as the writ had by then expired, such irregularity could be cured under O 2 r 1.

Order 2 r 1 reads as follows:

> (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.
> (2) Subject to paragraph (3), the court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

In the first place, the question whether non-renewal of a writ served after expiry is an 'irregularity' within O 2 r 1 appears to be unsettled.

In *Bernstein* v *Jackson*,[2] Dunn LJ expressed the view that there was 'great force in the submission that O 6 r 8 provides a compendious code for extension and renewal of writs, and that it is not the type of irregularity which it was envisaged could be dealt with by the provisions of O 2 r 1' (at p 812).

However, in *Leal* v *Dunlop Bio-Processes Ltd*,[3] Stephenson LJ disagreed with Dunn LJ's statement in *Bernstein*[2] and Slade LJ agreed with Stephenson LJ. Both Stephenson and Slade LJJ gave O 2 r 1 full effect on its plain meaning. Slade LJ said, at p 215:

> Having had the advantage of reading the judgment of Stephenson LJ, I am now persuaded that the judge in *Bernstein* v *Jackson* [1982] 2 All ER 806 would have had the jurisdiction under O 2 r 1 to treat the failure to extend the writ as an 'irregularity' within the meaning of O 2 r 1 and to waive it accordingly. The width of the wording of the rule, in my opinion, compels this conclusion...

In our judgment, such an irregularity is plainly within the ambit of O 2 r 1 so that it could be, as it were, cured. We respectfully agree with Slade LJ that this conclusion is compelled by the width of the wording of the rule.

It follows that if the non-renewal of the writ is an irregularity that can be cured under O 2 r 1, the next question is as to the exercise of the court's discretion whether or not to cure such irregularity. In this respect, the principle is clear that the court's power to cure an irregularity under O 2 r 1, in the first place, can only be exercised if the court could have properly granted the order for which there was a failure to apply, had there also been an application made pursuant to the relevant provision in the Rules. In other words, the power in O 2 r 1 to cure irregularities is subject to the same principles which govern an ordinary application made under the relevant rule.

Thus, in *Leal* v *Dunlop Bio-processes Ltd*,[3] Stephenson LJ said, at p 213:

> ... if it is wrong to allow the plaintiff to continue these statute-barred proceedings by extending the validity of his writ under O 6 r 8 to enable the plaintiff to apply to issue a concurrent writ for service out of the jurisdiction under O 6 r 6, it must be wrong to allow him to continue them by giving him leave to serve it out of the jurisdiction under O 11 r 1. Order 2 r 1 should not be invoked to allow either course.

In the same case, Slade LJ said, at p 215:

> .. it would have been an improper exercise of the registrar's discretion under O 2 r 1, to make good the irregular service of the writ retroactively in this case, where he could not properly have renewed the writ under O 6 r 8. When seeking the indulgence of the court under O 2 r 1, in circumstances such as the present, a plaintiff cannot, in my opinion, expect the court to exercise its discretion more favourably than it would be prepared to exercise it on an application under O 6 r 8. If he cannot properly enter through the front door of O 6 r 8, he should not be allowed to enter through the back door of O 2 r 1.

Further, in *Bernstein* v *Jackson*[2] Slade LJ said, at p 812:

> If a specific application to renew the writ had been before him, I do not think that he could have properly extended its validity for the reasons already given by Dunn LJ. Correspondingly, I do not think that the plaintiffs can be in a better position than they would have been if such a specific application had been before the judge.

In the present case, the plaintiffs could not avail themselves of O 2 r 1. The writ was set aside by the learned registrar on 22 May 1986. Had an application under O 6 r 7 been made to the registrar, he would not have been able to renew the writ in the manner asked for, for two reasons.

First, on 22 May 1986, more than 12 months would have lapsed since the validity of the writ last expired (ie 1 December 1981). As already dealt with earlier, there is no power to renew the writ for more than 12 months. In the present case, to validate the service of the writ which was on 28 December 1985, a renewal for 60 months would have been required. Neither could the registrar have made an order for renewal of the writ for 12 months from 2 December 1985 to 1 December 1986 without the writ having been renewed continuously from 1 December

1981, the day of its expiry. Order 6 r 7(2) provides in absolutely clear terms that any extension of the validity of the writ is to begin 'with the day next following that on which it would otherwise expire ...'

Secondly, on the facts, we do not think it would have been a proper exercise of discretion to grant a renewal of the writ in any case. The plaintiffs have not shown any good reason why the validity of the writ ought to have been extended.

The fire in this case occurred on 4 December 1979. The plaintiffs' claim was rejected by the defendants in July 1980. The writ was then issued on 2 December 1980. However, between 2 December 1980 and 7 August 1985 when the plaintiffs made their application to renew the writ, there was no attempt at service. This, the plaintiffs submitted, was due in part to the fact that the plaintiffs' documents relating to the insurance claim were seized by the Criminal Investigation Department who were investigating charges of deception and cheating of the insurance claim. In addition, the plaintiffs had stayed their hands in reliance on their previous solicitors' advice. Finally, the plaintiffs submitted, they wanted to await the outcome of criminal proceedings against the general manager relating to the insurance claim. It seems to us that what is clear is that the plaintiffs had made a conscious decision not to serve the writ. There is no question of inability to serve; the plaintiffs were simply unwilling to effect service on the defendants. The investigations by the CID could not account for the failure to serve the writ timeously; the plaintiffs could have obtained copies of relevant documents seized by the CID. That the plaintiffs had merely relied on their solicitors' advice is clearly insufficient good reason for renewal of the writ. Again, the decision to wait for the outcome of the criminal proceedings against their general manager, could not in our view, justify non-service for such a long period of time.

The plaintiffs also argued that on a balance of hardship between the parties, the writ ought to have been renewed. The limitation period had not run out when the order for renewal of the writ was made on 18 November 1985; there were 16 days remaining then before the six-year limitation period expired. Thus, the plaintiffs submitted, the defendants suffered no hardship by virtue of the writ having been renewed. In contrast, the plaintiffs would suffer hardship if the writ is not to be renewed as their action would now be time-barred. Further, the plaintiffs sought to rely on the fact that the assistant registrar had granted their application for renewal to their disadvantage for had the application for renewal been rejected the plaintiffs would still have been in time to issue a fresh writ. In this respect, the plaintiffs referred us to *Devon & Cornwall Housing Association* v *Acland Thorman & Miller-Williams*[4] where Glidewell LJ said, at p 52:

> ... I also agree that the fact that the district registrar made the order extending the validity of the writ was a relevant factor for the judge at the later stage. If (as in this case) an application of this sort is made before the original validity of the writ has expired, and there is doubt as to whether the application is soundly based, it is better for the plaintiff that his application should be refused. He will then presumably serve his writ at once, and limitation will pose no further threat to this action. But, if the application be granted, the plaintiff is thereafter at risk of an application to strike out, depriving him of his cause of action. Of course, he brings this risk upon himself by making the application but he is entitled also to say, in the words of Eveleigh LJ in *Howell* v *Taylor*, that he has lost his claim 'by relying upon the decision of the court when it relaxed its rules in (his) favour after (he) had made an application in accordance with the rules.'

What this passage says is simply that it is relevant to take into consideration the fact that the application for renewal had been granted in circumstances in which, as events turn out, the plaintiffs would have been better off had the application been dismissed instead. We agree with this principle. However, it remains that the case has still to be looked at as a whole and all circumstances considered in deciding whether there are good reasons for extending the validity of the writ. The fact that if renewal is refused the plaintiffs' claim would be time-barred is not an exceptional circumstance as pointed out by Megaw J in *Heaven* v *Road & Rail Wagons*[5] where the learned judge said, at p 365:

> Clearly the fact that the plaintiff will be deprived of the possibility of successfully pursuing his claim against the defendants, since the latter can plead the statute of limitations to any fresh writ, cannot be a ground. It is not an exceptional circumstance: it is the necessary consequence of applying the general rule ...

Considering the circumstances of the case as a whole, we are of the view that the plaintiffs had, in any event, no good reason for extending the validity of the writ for service.

Finally, we would note two House of Lords decisions which have been reported since this appeal was dealt with: *Kleinwort Benson Ltd* v *Barbrak Ltd*[6] and *Waddon* v *Whitecroft Scovill Ltd.*[7] Both decisions have clarified that what is required in an application for renewal are not exceptional circumstances but good reasons. We do not think either decision changes what we have stated above. However, we would emphasize the fact that both cases make it clear that writs are for serving and that good reason is required before they will be renewed. We would also express our agreement with the disapproval in *Waddon*[7] of any practice whereby extensions of writs are granted more or less as a matter of course, even in cases involving questions of limitation of action. As Lord Brandon put it, any such practice is 'quite contrary to long-established authority'.

For all the above reasons, we dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Lim Ganesh & Liu*; *Drew & Napier*.

Reported by *Ng Sheau Jiuan*

Lau Chi Sing v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) – CRIMINAL APPEAL NO 20 OF 1987
WEE CHONG JIN CJ, CHUA AND RAJAH JJ
18 NOVEMBER 1988

Criminal Law – Dangerous drugs – Trafficking of – Transporting drugs from hotel to airport – Whether this constitutes trafficking offence – Whether intended recipient of drugs must be in Singapore for offence to be made out – Misuse of Drugs Act (Cap 185, 1985 Ed), ss 2 & 5(a)

The appellant was charged and convicted of the offence of trafficking in a controlled drug under s 5(a) of the Misuse of Drugs Act (Cap 185, 1985 Ed) ('the Act'), in that he had transported the drugs from a hotel to the airport without authorization (see [1988] 1 MLJ 383). At the trial, it was not disputed that the appellant had brought the batteries (which contained the drugs) with him to Singapore and was going to bring them to Amsterdam to be delivered to some other person there, when he was arrested at the airport.

The appellant appealed against his conviction contending that in order for the offence of trafficking by transporting drugs to be made out, the intended recipient of the drugs that were being transported must be in Singapore. Counsel for the appellant relied on the Privy Council's decision in *Ong Ah Chuan* v *PP*[1] in support of this contention. The appellant also submitted that the trial court had erred in not accepting the appellant's evidence that he had thought the batteries contained diamonds.

Held, dismissing the appeal:

(1) The Privy Council in *Ong Ah Chuan*[1] had drawn a distinction between the transportation of drugs intended to be retained solely for the transporter's own consumption as contrasted with those intended to be delivered to someone else whether it be the actual consumer or a distributor or another dealer. It is only in the latter that the offence of trafficking is committed. The reference to the purpose for which drugs are being transported was a commonsensible one and was made for the sole reason that otherwise the mere act of transporting drugs would amount to the offence of trafficking under the Act even though the drugs are intended for the transporter's own purpose. Such a result would be repugnant to the ordinary meaning of the word 'traffic' and to the structure of the Act which draws a distinction between the offence of possession and that of trafficking, the latter being punishable with heavier penalties.

(2) Apart from authority, it is plain that the proposition submitted by counsel for the appellant could not have been intended by Parliament. To accept counsel's submission that one has not committed the offence of trafficking where one has transported drugs within Singapore merely because such drugs were transported with the intention of delivering them to someone else in some other country would be to declare Singapore as a safe-transit point for traffickers all over the world. Such a result is wholly unacceptable.

(3) It is clear, in the court's opinion, that such a construction placed on the Act does not contravene any rule of international comity.

(4) It is not disputed that in this case the presumption of knowledge of the nature of the drugs under s 18 of the Act applied and that the onus was on the appellant to rebut that presumption on a balance of probabilities. The court agreed with the trial court's finding that the appellant had failed to rebut this presumption.

Cases referred to

1 *Ong Ah Chuan* v *PP* [1981] 1 MLJ 64 (refd)
2 *Treacy* v *DPP* [1971] 1 All ER 110 (folld)
3 *R* v *Berry* [1984] 3 All ER 1008 (refd)

Legislation referred to

Misuse of Drugs Act (Cap 185, 1985 Ed) ss 2, 5(a), 18
Explosive Substances Act 1883 [UK] s 4(1)

Appeal from: Criminal Case No 29 of 1985 (High Court, Singapore)

Joseph Gay for the appellant.
Swaran Singh for the Public Prosecutor.

Cur Adv Vult

Wee Chong Jin CJ (delivering the judgment of the court): This was an appeal by the appellant who was convicted by the High Court on 25 November 1987 on the following charge:

> You, Lau Chi Sing, are charged that you, on or about the 16th day of October 1984, at between 7.30pm and 7.55pm, in Singapore, did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, (Cap 185, 1985 Ed) to wit, by transporting 242.85 gm of diamorphine from Ghim Peng Hotel, Geylang Road to Singapore Changi Airport in NTUC taxi no SH 8477M, without any authorization under the said Act or the regulations made thereunder, and you have thereby committed an offence under s 5(a) and punishable under s 33 of the Misuse of Drugs Act (Cap 185, 1985 Ed).

The appellant, a Hong Kong national, had arrived in Singapore, from Kuala Lumpur, on 15 October 1984 and had checked into Ghim Peng Hotel at Geylang Road. At about 7.30pm on the same day, he checked out of the hotel and took a taxi to Changi Airport. There he checked in for his flight to Amsterdam after which he was arrested by a senior narcotics officer.

The appellant had with him a radio cassette player powered by ten batteries, eight bearing the brand 'Hi-Watt' and two bearing the brand 'National Hi-Top'. In addition, the appellant carried another three National Hi-Top and two Hi-Watt batteries in a bag. All 15 batteries were seized and sent to the Department of Scientific Services for examination. Eight Hi-Watt batteries were found to contain diamorphine totalling 242.85 gm, with a street value of about $290,000.